IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10931 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HANIF @ BHAJI IMTIYAZ SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10931 of 2002

MR PARTHIV B SHAH for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/02/2003

ORAL JUDGEMENT

1. By filing this petition, the petitioner has challenged the order of detention dated 6-7-2002 passed

against him by the Police Commissioner, Vadodara City, whereby the petitioner has been detained under sub-section 2 of Section 3 of the Prevention of Anti Social Activities Act, 1985 ("PASA" for short).

2. The grounds of detention served upon the petitioner alongwith the order of detention indicate that two criminal cases are pending against the petitioner. The said cases are under Sections 143, 147, 148, 149, 336, 353, 395, 435,436 and 188 of the Indian Penal Code read with Section 135 of the Bombay Police Act. It is alleged against the petitioner that he is a communal minded person and he has damaged the properties of other communities. The grounds also indicate that the statement of two witnesses are also recorded who have also stated that the petitioner is a head strong person and he is trying to disturb the peace in the area.

3. The petitioner has challenged the aforesaid detention order on various grounds. The main ground canvassed by the petitioner at the time of hearing of the petition is that even the last registered case is of 27th April, 2002 and though the petitioner was immediately arrested in connection with the said case, the detention order is passed after a considerable period i.e. on 6th July, 2002. He has further submitted that if really the activities of the petitioner were required to be curbed immediately, it was not necessary to wait for such a long time for passing the detention order. It is further argued by the learned Counsel for the petitioner that the petitioner was released on bail in connection with the aforesaid criminal cases on 5th July, 2002 and on the very next day i.e. on 6th July,2002, the detention order is passed. Under the aforesaid circumstances, it is contended by the learned Counsel for the petitioner that the impugned order of detention suffers from the vice of non application of mind on the part of the detaining authority as looking to the fact that the detention order is passed on the very next day, the detaining authority must not have properly appreciated the material available on record.

4. Learned AGP Mr. Patel has, however, submitted that since the petitioner was in judicial custody till 5th July, 2002 the detention order was not passed earlier and the moment the petitioner came to be released on bail by the competent authority on 5th July,2002, on the very next day i..e. on 6th July,2002, the detention order is passed. Mr. Patel has also given particulars about the proposal received by the detaining authority from the Sponsoring Authority. According to Mr. Patel, the

Sponsoring Authority submitted necessary papers to the detaining authority on 29th June, 2002 and the statement of witnesses were verified on 5th July, 2002 and on the very next day, the detention order came to be passed on 6th July,2002.

5. At this stage, reference is required to be made to the decision of this Court in the case of Ranubhai Bhikhabhai Bharwad v. State of Gujarat & Ors.., XLI (3) GLR 2696 wherein it has been observed in paragraph 9 as under:

" ....

The statements of the three witnesses in the instant case which were recorded before the Police Inspector on 17th August, 1999, 21st August, 1999 and 25th August, 1999 with regard to the incidents dated 10th July, 1999, 13th June, 1999 and 26th June, 1999 were the material alongwith the proposal which is said to have been made on 27th August, 1999 and it is clear from the record that it was on 29th August, 1999 that the detaining authority has recorded its verification of all these three statements. There is nothing on record to show that the detaining authority had considered the proposal dated 27th August, 1999 and on 29th August, 1999, all that has been done is that the concerned witnesses have stated before the detaining authority that the statements as had been made on the respective dates were correct and immediately thereafter on the following day, i.e. on 30th August, 1999 the detention order has been passed.

...."

6. Now, in the instant case also, considering the fact that the detaining authority could not have been in a position to go through the bail order passed by the competent authority, especially when, there is a bunch of more than 200 papers, it can safely be presumed that the detaining authority has not applied his mind to the papers placed before him and has passed the impugned order of detention on the very next day i.e. on 6th July, 2002 when the petitioner came to be released only on 5th July,2002.

7. Under these circumstances, I am constrained to hold that mechanical exercise of power by the detaining authority has vitiated the subjective satisfaction rendering the detention order invalid. In that view of the matter, the impugned order of detention deserves to be quashed and set aside on that ground alone.

8. On the basis of the foregoing discussion, the petition is allowed. The order of detention dated 6-7-2002 passed by the Police Commissioner, Vadodara City, against the petitioner is hereby quashed and set aside. The petitioner-detenu-Hanif alias Bhaji Imtiyaz Shaikh is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

(P.B.Majmudar,J.)

stanley-pbm.